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MEMORANDUM

TO: The Utah Board of Oil, Gas and Mining ("Board")

FROM: William R. Richards and Thomas S. Mitchell, Assistant Attorneys General for the State of Utah

Re: Bonding Requirements of Uintah County under the Utah Mined Land Reclamation Act, Utah Code Ann. § 40-8-1 (1988).

Pursuant to your request, we have researched the issue of whether Uintah County is exempt from the reclamation bonding requirements of the Utah Mine Land Reclamation Act (the "Act"). See Utah Code Ann. § 40-8-1 (1988). Our research indicates that the Board has authority to require Uintah County to secure its reclamation obligations, but also has the ability to allow the County to self-bond if the Board so desires. As you know, however, the Board is presently considering rule making which would eliminate the Division's ability to accept self-bonds.

Before discussing the issue, we will briefly set forth the facts to place the issue in context.

FACTS

Approximately 5 years ago, the Division of Oil, Gas and Mining (the "Division") and Uintah County entered into negotiations concerning whether the County needed to execute a reclamation contract and provide the Division with reclamation surety for an asphalt mine located approximately 4 miles south of Vernal. The mine had been in operation for over 50 years. The County agreed to sign a reclamation contract, but was unwilling to post hard surety. On July 19, 1989, the Chairman of the Board of Oil, Gas and Mining, Gregory P. Williams, sent a letter to the Uintah County Commission. In the letter, Mr. Williams stated that the Board would "waive" formal bonding if an approved reclamation plan were in place.

It is difficult to determine exactly what happened after the Chairman's 1989 letter. Apparently, a mining plan was filed and approved but no reclamation contract was executed.

In July 1993, Uintah County submitted a Notice of Intention to amend its mining plan. The amendment added a new mining area which increased the total disturbed area. As such, the Division calculated a revised reclamation estimate for the mine. The Division sent a Reclamation Contract to the Uintah County Commission which the County Commission signed. The Division did not request the County to post reclamation surety.

The reclamation contract committed the County to reclaim the mine, but also contained references to the type and amount of surety posted by the operator although the County was not asked to provide any surety.

The matter came before the Board at its May 1994 hearing. At the hearing, the Division presented the reclamation contract for the Board's approval. Before discussing the merits of the contract, the Board requested us to inform the Board of its authority to require a county government to post reclamation surety.

Mined Land Reclamation Act

A. Background

The Utah Mined Lands Reclamation Act requires that all mining operators provide the Division with plans for reclaiming their mine sites. Utah Code Ann. § 40-8-3. The Act also provides that operators for areas larger than five acres must submit appropriate surety prior to commencing mining operations. The form and amount of the surety must be approved by the Board. At present, acceptable forms of surety may include: (1) Corporate surety bond; (2) Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining; (3) Cash; (4) An irrevocable letter of credit issued by a bank organized to do business in the United States; (5) Escrow accounts; and (6) Written self-bond in the case sufficient financial strength.¹ See Utah Admin. R. 647-2-111.

¹ The Board is presently considering a rule change which would eliminate the Division's ability to accept self-bonds. The proposal presently before the Board would be to delete subparagraph (6) from Utah Admin. R. 647-2-111.

B. The Utah Mined Land Act Pertains to Public Entities

1. The Board has jurisdiction over public entities

The Act is clear that the Board has the authority to require Uintah County to provide reclamation surety. Utah Code Ann. § 40-8-5 (1988) specifically provides that "[t]he board and the division have jurisdiction and authority over all persons and property, both public and private, necessary to enforce the provisions of this act." Id. (emphasis added). Accordingly, the Act provides the Board with jurisdiction over public entities when they undertake mining activities.

1. The Act defines "Operator" to include public entities

The key definition in the Act is the definition of an "operator." Once an entity falls within the definition of an "operator," it must comply with all provisions of the Act. To this end, the Act's definition specifically includes "pubic entities:"

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.

Utah Code Ann. § 40-8-(12) (1988).

Because the Act empowers the Board to regulate public entities, and because the Act includes public entities who conduct mining operations within the definition of "operator," we conclude that the Board has the authority to require Uintah County to post surety for its reclamation obligations. Whether it chooses to do so, however, is a matter of policy for the Board's determination.